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January 19, 2017

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VIA HAND DELIVERY

Marlene H. Dortch, Esq.  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554  
*Attn: Chief, Disability Rights Office  
Consumer & Governmental Affairs Bureau*

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RE: CG Docket No. 03-123  
HAMILTON RELAY, INC.  
*Petition for Waiver*

Dear Ms. Dortch:

Transmitted herewith, on behalf of Hamilton Relay, Inc. ("Hamilton"), is a petition for waiver of the Commission's speed of answer requirement for Internet Protocol Captioned Telephone Service, with respect to a single day following a catastrophic event at Hamilton's relay call center in Georgia earlier this month.

Pursuant to Sections 0.457 and 0.459 of the Commission's rules, 47 C.F.R. §§ 0.457, 0.459, Hamilton requests that redacted portions of the public version of the waiver request be treated as confidential and withheld from public inspection.

In accordance with the requirements of Section 0.459(b), 47 C.F.R. § 0.459(b), Hamilton submits the following:

- 1) 0.459(b)(1): Identification of the specific information for which confidential treatment is sought: Hamilton has filed a public document in ECFS (CG Docket No. 03-123) which redacts certain confidential information from this filing, including sensitive speed of answer measurements and information on call center staffing. Hamilton requests that the redacted portions of the filing be treated as confidential and withheld from public inspection.

- 2) 0.459(b)(2): Identification of the Commission Proceeding in which the Information Was Submitted or a Description of the Circumstances Giving Rise to the Submission: The filing is being submitted in CG Docket No. 03-123.
- 3) 0.459(b)(3): Explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged: The filing contains sensitive commercial information about Hamilton's competitive status and markets. Pursuant to the Freedom of Information Act ("FOIA"), public disclosure of such information is not required if it contains "commercial or financial information obtained from a person and [is] privileged and confidential." 5 U.S.C. § 552(b)(4). Such information "would customarily be guarded from competitors." 47 C.F.R. § 0.457(d)(2). For this reason, Hamilton submits that the redacted information in the filing is covered by the FOIA exception.
- 4) 0.459(b)(4): Explanation of the degree to which the information concerns a service that is subject to competition: Telecommunications relay services are competitive services with numerous competitors to Hamilton.
- 5) 0.459(b)(5): Explanation of how disclosure of the information could result in substantial competitive harm: If the redacted portions of the filing were disclosed, substantial competitive injury could occur because Hamilton's competitors would be able to obtain non-public sensitive information about Hamilton's market position and business practices, which potentially could be used for anticompetitive purposes.
- 6) 0.459(b)(6): Identification of any measures taken by the submitting party to prevent unauthorized disclosure: Hamilton requires that its employees treat the redacted materials as confidential and privileged. In keeping with this practice, Hamilton has requested confidential treatment by the Commission.
- 7) 0.459(b)(7): Identification of whether the information is available to the public and the extent of any previous disclosure of the information to third parties: The redacted information is proprietary and not available to the public. The information has not been disclosed to third parties other than Hamilton's legal counsel.
- 8) 0.459(b)(8): Justification of the period during which the submitting party asserts that material should not be available for public disclosure: Hamilton requests that the redacted information be treated as confidential indefinitely, as it is not possible at this time to determine any date certain by which the information could be disclosed without risk of harm.
- 9) 0.459(b)(9): Any other information: Much of the redacted information is data that is submitted to the TRS Fund Administrator. Pursuant to 47 C.F.R. § 64.604(c)(5)(iii)(I), the TRS Fund Administrator is obligated to keep all such data confidential and may not disclose such data in company-specific form. In keeping with the recognized confidential nature of this information, the public interest will be served if the Commission treats the

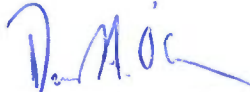
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redacted information in Hamilton's filing as confidential. Such treatment will allow the Commission to consider Hamilton's waiver request without disclosing sensitive commercial information to the public.

Should you have any questions concerning this filing, please contact the undersigned.

Respectfully submitted,

WILKINSON BARKER KNAUER, LLP



David A. O'Connor  
Counsel for Hamilton Relay, Inc.

Enclosure

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of )  
 )  
Telecommunications Relay Services and ) CG Docket No. 03-123  
Speech-to-Speech Services for Individuals with )  
Hearing and Speech Disabilities )

**PETITION FOR WAIVER**

Hamilton Relay, Inc. ("Hamilton"), by its counsel and pursuant to Section 1.3 of the Commission's rules,<sup>1</sup> hereby requests a waiver of the speed of answer ("SOA") requirement with respect to a single day following a catastrophic event at Hamilton's relay call center in Georgia. For the reasons set forth below, Hamilton submits that, due to circumstances beyond its control, the SOA requirement should be waived for all Internet Protocol Captioned Telephone Service ("IP CTS") minutes of use handled by Hamilton on January 7, 2017.

**Background**

On January 2, 2017, at approximately 10:15 pm, a severe storm destroyed Hamilton's relay call center in Albany, Georgia.<sup>2</sup> The relay center, [REDACTED], staffed [REDACTED] employees and had been in operation for [REDACTED]. Due to the federal holiday on January 2, the call center was not fully staffed. Two Hamilton employees were injured and taken to a hospital,

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<sup>1</sup> 47 C.F.R. § 1.3.

<sup>2</sup> Local news reported on the devastation at the scene. *See* <http://www.walb.com/story/34172471/call-center-staff-survives-office-roof-collapse>. Although the National Weather Service has not confirmed the presence of a tornado in the area, insurance adjusters on site have informed Hamilton that the destruction and debris patterns at Hamilton's call center are consistent with a tornado.

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but fortunately there were no serious injuries. However, the roof of the building collapsed and the call center immediately became inoperable.

Severe winds that evening caused significant damage throughout Dougherty County and Albany, the county seat. On January 3, the Dougherty County Commission declared a state of emergency and triggered the county's Emergency Operations Plan.<sup>3</sup> On January 5, the Governor of Georgia declared a state of emergency for four counties in southwest Georgia, including Dougherty County.<sup>4</sup>

In the wake of the storm, after ensuring the safety of its employees, Hamilton and its subcontractor immediately began increasing staff at other call centers.<sup>5</sup> [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. Hamilton is grateful for the overwhelming response from its employees, approximately [REDACTED] of whom have been willing to relocate temporarily while Hamilton works to establish a call center in Georgia again.<sup>6</sup>

With significant efforts by Hamilton's staff and management, Hamilton was able to achieve required answer speed performance levels on [REDACTED] despite the sudden and unexpected decrease in available staff.

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<sup>3</sup> [http://www.albanyherald.com/news/local/dougherty-county-declares-state-of-emergency-in-wake-of-powerful/article\\_105a76cb-fe6a-5879-bbb7-99acf968c25f.html](http://www.albanyherald.com/news/local/dougherty-county-declares-state-of-emergency-in-wake-of-powerful/article_105a76cb-fe6a-5879-bbb7-99acf968c25f.html).

<sup>4</sup> <http://www.walb.com/story/34194081/deal-declares-state-of-emergency-for-south-ga-counties>.

<sup>5</sup> Hamilton is also preparing to open two temporary call centers in Albany, located at [REDACTED]

[REDACTED]. These facilities should be opened by [REDACTED].

<sup>6</sup> [REDACTED]

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However, on Saturday, January 7, Hamilton achieved an SOA performance of [REDACTED] for IP CTS, thus missing the 85% SOA requirement for IP CTS by only [REDACTED]. Hamilton believes that it missed the required SOA for January 7 due to a significant increase in call volumes that day as a result of a major ice storm on the east coast. Despite Hamilton's efforts to increase staff in preparation for this weekend event, Hamilton did not achieve an 85% SOA for IP CTS on January 7 as a direct result of its loss of the Albany call center on January 2.<sup>7</sup>

[REDACTED]

[REDACTED]

[REDACTED]

**A Waiver of the SOA Requirement Is Justified Under the Circumstances**

Providers of Telecommunications Relay Services ("TRS") generally are required to answer 85% of all relay calls within 10 seconds, as measured on a daily basis.<sup>9</sup> This rule, as with any Commission rule, may be waived "if good cause therefor is shown."<sup>10</sup> In particular, a waiver is appropriate where the particular facts make strict compliance inconsistent with the public interest.<sup>11</sup> In addition, the Commission may take into account considerations of hardship,

7 [REDACTED]

8 [REDACTED]

<sup>9</sup> 47 C.F.R. § 64.604(b)(2)(ii). To the extent necessary, Hamilton also requests a waiver of Section 64.3064(b)(2)(i), which requires TRS providers to "ensure adequate TRS facility staffing...." Hamilton submits that the reasons justifying a waiver of Section 64.604(b)(2)(ii) apply equally to Section 64.604(b)(2)(i).

<sup>10</sup> *Id.* § 1.3.

<sup>11</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

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equity, or more effective implementation of overall policy on an individual basis.<sup>12</sup> A waiver is thus appropriate if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.<sup>13</sup> Hamilton submits that a waiver of the SOA performance requirement for January 7, 2017 with respect to Hamilton's IP CTS offering is justified under the circumstances.

Specifically, Hamilton submits that the Commission should take into account the hardship that Hamilton and its staff endured as a result of a natural disaster and the loss of [REDACTED]  
[REDACTED]  
[REDACTED]. Hamilton believes that strict compliance with the SOA requirements in this instance was rendered impossible, despite Hamilton's mitigation efforts, and that it would not serve the public interest to penalize Hamilton under the circumstances for missing the SOA requirement by less than [REDACTED] due to circumstances beyond Hamilton's ability to control.

The Commission has a long history of issuing waivers in the wake of natural disasters such as this one, and in waiving the SOA requirement when necessary.<sup>14</sup> These waivers reflect

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<sup>12</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular*, 897 F.2d at 1166.

<sup>13</sup> *Northeast Cellular*, 897 F.2d at 1166.

<sup>14</sup> See, e.g., *Telephone Number Portability Number Resources Optimization*, Order, 28 FCC Rcd 8154 (WCB 2013) (temporarily waiving 47 C.F.R. § 52.15(f)(ii) of the Commission's rules that prohibit carriers from aging numbers for more than 90 days in order to permit carriers to restore service in areas of Oklahoma that were afflicted by severe storms and tornadoes); *Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company*, Public Notice, 31 FCC Rcd 10,952, 10,959 (WCB 2016); *1998 Biennial Regulatory Review – Streamlining of Mass Media Applications, Rules, and Processes; Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities*, Report and Order, 13 FCC Rcd 23,056 ¶ 86 (1998) (setting forth a procedure for tolling the three-year construction period for (continued)...

that regulated entities may be unable to strictly comply with Commission requirements despite their best efforts, due to reasons beyond their control. For example, in 2007 the Commission noted that “a hurricane, tornado or other disaster” warrants a deviation from Commission rules, and that such deviation “will better serve the public.”<sup>15</sup> The Commission also noted that granting such relief would allow the providers to continue developing their risk mitigation strategies and contingency plans in an effort to reduce the likelihood and duration of any future service outage.<sup>16</sup> The same rationale applies here. The Commission should grant the requested relief in order to give Hamilton the assurance it needs that services already provided will be compensated even in the face of an unexpected natural disaster, and to give Hamilton the ability to expend the resources necessary to further develop its risk mitigation strategies.

Moreover, a waiver in this instance would be consistent with an ongoing effort to acknowledge that a provider may miss SOA requirements for discrete reasons that are beyond the control of the provider. Specifically, the Commission has an open proceeding to examine

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broadcast licensees if construction is blocked by natural disasters). In addition, CGB waived SOA requirements for an IP Relay provider for five months (retroactively and prospectively) because the provider did not anticipate meeting required SOA levels due to another IP Relay provider’s discontinuance of service. *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, 29 FCC Rcd 14,882 (CGB 2014). Similarly, the Commission granted a temporary waiver of the SOA requirement when levels of demand were unusually unpredictable, given the relationship between projected call volumes and compliance with those requirements. *Telecommunications Relay Services and Speech-To-Speech Services for Individuals with Hearing and Speech Disabilities*, Order, 17 FCC Rcd 157, 162-63, ¶¶ 15-16 (CCB 2001).

<sup>15</sup> *Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks*, Order, 22 FCC Rcd 10,541, ¶¶ 29-31 (2007) (granting one-year waiver of Section 272 of the Act and the Commission’s accounting and non-accounting structural separation safeguards in order to permit carriers to engage in integrated disaster recovery planning, following storm activity, including tornadoes in parts of Kansas and Alabama).

<sup>16</sup> *Id.* ¶ 31.



whether it should adopt a more flexible approach to the SOA standard due to extraordinary circumstances such as these. In 2015, the Commission sought comment on a proposal by VRS providers for the Commission to adopt “a self-executing exemption (i.e., one that can be effective without prior Commission approval in each instance) from the speed-of-answer standard for calls occurring as a result of specific extraordinary events beyond a provider’s control and a streamlined waiver procedure to address other events that may justify a waiver of the speed-of-answer standard.”<sup>17</sup> Hamilton agrees with the need for a streamlined waiver approach for circumstances such as this, where despite best efforts the provider cannot overcome the consequences of a natural disaster and misses an SOA requirement. The Commission should extend any regulatory relief in that proceeding to all TRS providers.

**Conclusion**

[REDACTED]

[REDACTED]

[REDACTED]

Hamilton therefore requests a waiver of the SOA requirement with respect to all IP CTS minutes of use handled by Hamilton on January 7, 2017, so that Hamilton may be compensated

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<sup>17</sup> *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Further Notice of Proposed Rulemaking, 30 FCC Rcd 12,873 ¶ 41 (2015).

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by the TRS Fund Administrator for those minutes of use.

Respectfully submitted,

HAMILTON RELAY, INC.

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Its Counsel

January 19, 2017